



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 2 OF 2016 (OS)

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

IN THE MATTER OF ADOPTION OF BABY A

BY

J M K AND ANN W W M (APPLICANTS)

JUDGMENT

1. The Applicants J M K and A W W M are in a monogamous marriage which was solemnized at [particulars withheld] Methodist Church, Nairobi on 29th November, 1997. They have no child of their own. They wish to adopt the child known as Baby A a minor of female sex, through the Originating Summons dated 12th January, 2016. From the pleadings the court gathers that J M K is a Branch Manager with [particulars withheld], while A W W M is a shopkeeper. They reside in Lang'ata and are both Christians.
2. Records indicate that the minor in this matter was reportedly abandoned at one, M M's hotel by an unknown person on 13th August, 2012. The report was booked via OB No. [particulars withheld] at Kamukunji Police Station on the 14th August 2012.
3. The child was referred to Thomas Barnado House Kenya Children's Home for care and protection on the same day. On 24th September, 2012 the child was officially committed to the same home by the Senior Resident Magistrate Children's court, Nairobi vide Protection and Care Case No. 419 of 2012. A letter dated 12th March, 2013 by Kamukunji Police Station confirmed that the biological parents of the child were not traced, nor did anyone come forward to claim the child.
4. The child was declared free for adoption on 17th April, 2013 by Kenya Children's Home Adoption Society vide certificate No. [particulars withheld]. She was released into the custody of the Applicants for mandatory foster care pending adoption on 16th April, 2015, upon their signing a Foster Care Agreement dated the same day. Since then she has been in the continuous custody and care of the Applicants.
5. Prior to the hearing of the adoption application, Kenya Children's Home, Adoption Society, prepared and filed a report in court. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child.
6. The Director of Children's Services also filed a report dated 13th October, 2016 recommending the

adoption for reasons that the child stands to gain parents. Further that she has flourished under the care of the prospective adoptive parents with whom she has bonded. The guardian ad litem, Mr. D K M also filed a report that was favourable and recommended the adoption of the child by the Applicants.

7. The child was in court during the hearing and appeared to have bonded well with the Applicants. She was jovial and related well with the Applicants. The court also notes that both Applicants' families support the adoption.

8. Be that as it may it is important to note that, the orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child’s best interests are of paramount importance in every matter concerning the child.”

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof.

9. The court observes that this is a local adoption and the Applicants, in the opinion of the court have fulfilled the requirements for local adoption under the Children Act, 2001. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. The child was observed to be in good health and in good spirits and had flourished under the care of the Applicants.

10. Secondly, the Applicants meet the social and financial parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought. The reasons advanced for making the application are that the female Applicant has had several miscarriages and following doctor's advice, the Applicants opted for the proposed adoption. That the Applicants wanted to fulfil the desire of parenthood, to have a heir of their properties and to give a deserving child a family to belong to.

11. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, the court allows the prayers sought in the Originating Summons dated 12th January, 2016 and orders as follows:

- i. The Applicants, J M K and A W W M are hereby allowed to adopt **Baby A** who shall henceforth be known as **M N K**.
- ii. Her date of birth shall be presumed to be 22nd June, 2010. She is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Nairobi.
- iii. M W M (sister to the 1st Applicant) is hereby appointed legal guardian of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 9th day of **February 2017**.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants